
Appeal Decisions

Hearing Held on 23 May 2023

Site visit made on 23 May 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Appeal A: APP/R0660/C/22/3309004

Land on the north side of Middle Lane, Congleton, CW12 3PU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Patrick Doherty against an enforcement notice issued by Cheshire East Council.
 - The enforcement notice, numbered 21/00900E, was issued on 14 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of Land from an agricultural use to a mixed use as a residential caravan site together with the associated formation of an area of hardstanding, erection of gates and fences and sheds and assorted paraphernalia un-associated with an agricultural use and an agricultural use.
 - The requirements of the notice are a) cease the use of the Land as a residential caravan site, b) remove all caravans from the Land, c) remove all vehicles, plant, machinery, toilets, sheds, structures and any other paraphernalia un-associated with an agricultural use of the Land, d) remove the hardstanding from the Land shown in the approximate position hatched green on the attached plan marked "Plan B", e) restore the Land shown in the approximate position hatched green on the attached plan marked "Plan B" by covering with topsoil and seeding with grass seed, and f) remove all resulting debris arising from compliance with steps b), c) and d).
 - The period for compliance with the requirements is a) 9 months and b) to f) 10 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/R0660/W/22/3308801

Land off Middle Lane, Congleton CW12 3PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Patrick Doherty against the decision of Cheshire East Council.
 - The application Ref 21/5240C, dated 12 October 2021, was refused by notice dated 27 July 2022.
 - The development proposed is change of use of land to a gypsy/traveller site for one family with two caravans, including access track, hardstanding and bio-disc sewage treatment plant.
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Decisions

Appeal A: APP/R0660/C/22/3309004

1. It is directed that the enforcement notice be varied by deleting all of the words in paragraph 6 a) to f) and replacing them with '6 a) *14 months after this notice takes effect*, b) *15 months after this notice takes effect*, c) *15 months after this notice takes effect*, d) *15 months after this notice takes effect*, e) *15 months after this notice takes effect* and f) *15 months after this notice takes effect*'. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/R0660/W/22/3308801

2. The appeal is dismissed.

Procedural Matters

3. In respect of Appeal A, there was discussion between the main parties at the hearing in terms of the specific development that had taken place on the land when the notice was issued. The main parties agreed that there were four touring caravans, LED lighting, hardstanding and fencing. I have considered the breach of planning control and the ground (a) appeal on this basis although at the hearing the appellant commented that the deemed planning application should be determined based on one pitch and a maximum of one static caravan and one touring caravan as per Appeal B. I have therefore determined the ground (a) appeal on the basis that the number of caravans on the site could be controlled by planning condition.
4. In respect of Appeal B, the planning application form describes the proposed development as '*change of use of land to a gypsy/traveller site for one family with two pitches including access track, hardstanding and bio-disc sewage treatment plant*'. The evidence is that the planning application was amended at determination stage such that one pitch and not two pitches is proposed. In the banner heading above, I have therefore taken the description of development from the appellant's appeal form which states '*change of use of land to a gypsy/traveller site for one family with two caravans, including access track, hardstanding and bio-disc sewage treatment plant*'. This was agreed by the main parties at the hearing.
5. The Cheshire East Local Plan Site Allocations and Development Policies Document was adopted on 14 December 2022 (SADPD). This post-dates the Council's refusal of planning permission and the issuing of the enforcement notice. On adoption, the SADPD replaced all of the saved policies from the Congleton Borough Local Plan First Review adopted in January 2005. I have determined the appeals in accordance with the development plan for the area which includes the SADPD and the adopted 2017 Cheshire East Local Plan Strategy 2010-2030 (CELPs).

Main Issues

6. Appeal A and Appeal B developments are not identical. For example, Appeal A relates to a mixed use including four touring caravans used for residential purposes on part of the site and the rest of the site in use for agricultural

purposes. In respect of this appeal, the Council raise no objection to use of part of the appeal site for agricultural purposes. I have no reason to disagree with this position, but it has nonetheless been necessary for me to consider the mixed-use development as a whole and, in particular, development associated with residential use of the site.

7. In contrast, Appeal B, which does not relate to a mixed use, includes the siting of a static residential caravan and a touring caravan, a new site access and the provision of a replacement pond, grassed areas and planting.
8. Apart from the matter of highway safety, which is a matter of dispute between the main parties in respect of Appeal A, the main issues for consideration are the same for both appeals.
9. In the context of the above, the main issues are: -
 - whether or not the developments would be inappropriate development in the Green Belt including their effect on openness and the purposes of the Green Belt,
 - the effect of the developments on the character and appearance of the area,
 - the effect of the developments on highway safety,
 - whether the site is sustainably located,
 - whether intentional unauthorised development has taken place,
 - the provision and need for Gypsy and Traveller sites,
 - the personal circumstances of the family, and,
 - if the developments are inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the developments.

Reasons

Whether inappropriate development in the Green Belt

10. There is no dispute between the main parties that the respective appeal developments are inappropriate development in the Green Belt. Indeed, the Government's planning policy for traveller sites 2015 (PPTS) states at paragraph 16 (Policy E) that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Paragraphs 147 and 148 of the National Planning Policy Framework 2021 (the Framework) state that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to any harm to the Green Belt. This is a matter that therefore weighs against allowing the appeals and, in this regard, there is conflict with policies SC7 and PG3 of the CELPS and policies HOU 5 and HOU 7 of the SADPD.

Effect on openness of the Green Belt

11. The essential characteristics of Green Belts are their openness and their permanence. The Court of Appeal¹ has confirmed that the openness of the Green Belt can have both a spatial and a visual dimension.
12. In respect of the appeal developments, the caravans, means of enclosure, vehicular parking and associated domestic paraphernalia has the effect of departing from the former open and essentially undeveloped nature of the appeal site. I find that the development, both existing and proposed, leads to a considerable loss of openness in spatial terms. The site is partly screened from public view because of existing vegetation to the north and west. However, the site is prominent when viewed from several areas in Middle Lane, particularly when travelling in an easterly direction, given the height of hedgerow along this road and open breaks within it. The development, including the extensive hardstanding area (even if reduced as part of the Appeal B proposal), is also conspicuous when viewed from parts of Buxton Road given the low-lying boundary vegetation and spatially separated trees.
13. While the effect of the developments on the openness of the Green Belt in visual terms is localised in extent, it is not the case that the site is screened from all public views. Overall, I find that the existing and proposed development has a moderate adverse impact on the openness of the Green Belt. This weighs against allowing the appeals and there is direct conflict with paragraph 137 of the Framework.

Effect on the purposes of the Green Belt

14. Paragraph 138 of the Framework states that the Green Belt serves five purposes. I am satisfied that the appeal developments do not conflict with four of the Green Belt purposes, namely that they would not lead to the sprawl of a large built up area (the site is not immediately connected to the settlement of Congleton), would not lead to neighbouring towns merging into one another, would not cause any harm to the setting and special character of any historic town and, given the scale and nature of the appeal developments, could not reasonably be said to directly prevent urban regeneration elsewhere.
15. Nonetheless, there is no doubt that the development that is the subject of appeals A and B has the effect of urbanising what was otherwise open and predominantly undeveloped land in the countryside. I conclude that the caravans, fencing, hardstanding and other associated development on the land has not/would not safeguard the countryside from encroachment. This weighs against allowing the appeals and hence there is conflict with paragraph 138 of the Framework and policy PG3 of the CELPS.

Effect on the character and appearance of the area

16. While the appeal site is not a significant distance away from the otherwise built-up area of Congleton, the area as a whole has a more rural character and appearance. The surrounding land is generally open and undulating and includes a sporadic pattern of mainly residential, equestrian and agricultural development which is mainly positioned close to the narrow country lanes. Prior to the unauthorised development taking place on the site, the site had a predominantly undeveloped and green appearance, apart from a small area of

¹ *Turner v SSLG & East Dorset Council* [2016]

hardstanding and there was also a pond and a seating arbour the latter of which appears to be shown by way of a Google image dated May 2019. It is understood that the land was used historically by the owners of the adjacent nursery.

17. Middle Lane is not lit, does not include pavements and is experienced by passers-by as a semi-rural environment of mainly deciduous trees and hedgerow, particularly alongside the road, and which give way to rolling countryside beyond and then to Congleton Cloud and the Peak Park fringe. The above collective attributes add positively and distinctively to the character and appearance of the area.
18. Owing to the extent of hardstanding area, coupled with the height, appearance and length of close boarded boundary fencing, and the size, location and striking bright colour of existing and proposed caravans on the site, I find that the developments cause unacceptable harm to the character and appearance of the countryside.
19. I acknowledge that sporadic built development does exist in the area. However, the site was essentially open and green prior to the unauthorised development taking place and the existing and proposed developments significantly urbanise this environment. I appreciate that from Buxton Road, the site is seen in the context of existing dwellings (including one that has recently been built), but to the passer-by the site previously provided an obvious and characterful visual transition into a more sporadic and semi-rural landscape.
20. The close boarded fencing, caravans and hardstanding can be viewed from parts of Middle Lane and Buxton Road. Views are more apparent in the winter and autumn months when deciduous vegetation is without leaf. The fencing immediately fronting Middle Lane is particularly dominant and intrusive when seen by passers-by and detracts from the otherwise mainly soft and green planting that is appreciated alongside this road. I accept that some of the plots to dwellinghouses in the immediate area include gates and some fencing. The gates at the appeal site are not in themselves unacceptable. However, it is the extent, appearance and position of the appeal fencing that is unacceptable. This does not constitute good design and does not assimilate well into the landscape when experienced as a whole.
21. The likely loss of existing hedgerow that is needed to facilitate safe vehicular sightlines (see reasoning below) would exacerbate such harm. In reaching this view, I am cognisant of paragraph 26(d) of policy H the PPTS which states that weight should be attached to not enclosing a site with so much hard landscaping, high walls and fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.
22. I acknowledge that in terms of appeal B, it is proposed to include a replacement pond and that there would be a reduced hardstanding area in relative terms given the provision, in part, of a 'grassed field' to be planted with wildflowers and fruit trees. I acknowledge that additional planting would, to some extent, soften the adverse impacts of both the appeal A and B developments. However, the planting of boundary leylandii would not be reflective of most of the other vegetation in the locality (noting that there are some exceptions) and, furthermore, either this form of planting, or more suitable indigenous boundary planting, would take some time to reach maturity and would unlikely endure forever.

23. Hence, the screening potential of additional boundary planting on the northern or western boundaries of the appeal site, or indeed within the site, would not alter or outweigh my conclusion on this main issue. If permitted, such landscaping, in combination with the close boarded fencing, would have the effect of enclosing what was otherwise a more open area of countryside prior to the unauthorised development taking place. In this case, I do not consider that the existing and proposed developments would accord with paragraph 26(b) of policy H of the PPTS which states that weight should be attached to sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness. In this case, even with additional planting, the existing and proposed developments would not be appreciated as being well planned, would not positively enhance the countryside environment and would not suitably retain openness.
24. For the collective reasons outlined above, I conclude that the existing and proposed development would cause harm to the character and appearance of this part of the countryside particularly when viewed from Middle Lane and Buxton Road. Therefore, it would not accord with the design, character and appearance requirements of policies SE1, SE4 and SC7 of the CELPS and chapter 12 of the Framework. In reaching this view, I have considered the evidence before me which indicates that only a very limited amount of development existed on the site previously.

Effect on highway safety (appeal A)

25. The existing access includes wooden gates which are positioned in close proximity to Middle Lane. In its current form, the access does not enable all vehicles, including those towing a caravan, to leave the highway when turning into the site from Middle Lane. In the absence of the gates/access being set well back off the road there is potential for unacceptable conflict to occur between vehicles using Middle Lane, particularly as vehicles turning into the site would have to wait on the road until access gates were opened. This would unacceptably interrupt the free flow of traffic on Middle Lane and could result in a rear end shunt for unsuspecting motorists. In addition, the position of existing frontage hedgerow is such that the existing access is deficient in terms of safe visibility splays.
26. Notwithstanding the above, access into the site has been considered as part of the determination of the planning application for appeal B (drawing No 71325 1002). The access would be formalised and the gate set back so that vehicles can suitably pull off the carriageway if need be. The hedges either side of the access would be set back to improve the visibility splay so that it is more than 50m in the leading direction and approximately 40m in the non-leading direction. I agree with the Highway Authority that this would constitute a safe and suitable access for the appeal B development.
27. In respect of appeal A, I find that the existing access would be capable of being made safe subject to the imposition of a condition requiring the development to accord with drawing No 71325 1002 within a defined period. At the hearing, the Council conceded that the highway safety main issue could be addressed by way of the imposition of a planning condition.
28. Notwithstanding the above, it is of note that in respect of both appeals A and B, it would necessitate the removal of existing and established hedgerow fronting Middle Lane. Both the appellant and a local resident commented at the

hearing that it would be possible to relocate the existing hedges into a new trench and hence the distinctive hedgerow character of Middle Lane would be maintained.

29. When questioned, the appellant did nonetheless agree that there was at least some risk associated with moving the hedge. This was in response to the comment from the Council's representative that there was a possibility that the hedges might die and that such a proposal had not been assessed by an expert. I agree that there is real potential for some risk associated with relocating the existing hedges. Without objective and persuasive evidence that the hedgerow would not die, I find that there is a likelihood of there being a need for new hedges to be planted (i.e., closer to the close boarded fence) to achieve the necessary vehicular sightlines. As detailed above, this compounds my concern relating to the effect of the development on the character and appearance of this countryside location as new indigenous hedges would take some time to reach maturity. This would expose dominant and lengthy areas of fencing for a long period of time and would mean that the site did not assimilate well into the immediate environment.
30. While there is real potential for some harm to be caused to the character and appearance of the area arising from the need to relocate/plant hedges, I nonetheless conclude that subject to conditional control the existing and proposed developments would not have an unacceptable impact on highway safety. Therefore, the existing development would be capable of according with the highway safety requirements of policy HOU7 (5) of the SADPD, policy SC7 of the CELPS and paragraph 111 of the Framework.

Sustainable location

31. There is dispute between the main parties as to whether site would be sustainably located from the point of view of accessing amenities and services by sustainable modes of transport.
32. The appeal site is not far away from the settlement of Congleton in terms of travel distance. It is close to the settlement, and, in this regard, I find that the appeal developments would not conflict with policy SC7 2(i) of the CELPS which states that '*the proximity of the site to local services and facilities*' should be taken into account. Furthermore, and in terms of travel distances, the appeal site is not '*away from*' the settlement of Congleton for the purposes of PPTS Policy H.
33. Notwithstanding the above, it was clear from my site visit that there are no footpaths on Middle Lane and it is not lit. Furthermore, there are no footpaths on Buxton Road for about 280 yards, it is not lit and at this point the carriageway narrows. Given this, I agree with the Council that journeys to and from amenities and services in the settlement of Congleton on foot would be dangerous and hence unlikely to be frequently contemplated. While it may be possible to use a bicycle on occasion, I nonetheless find that journeys to and from Congleton would likely be heavily car dependent. It is noteworthy that at the hearing the appellant indicated that while he had occasionally walked this route to Congleton, his family normally travelled by car.
34. Notwithstanding the above, heavy reliance on the private motor vehicle for most day-to-day journeys is not uncommon in a rural area and, in this case, the distances involved to reach amenities and services would not be significant.

Overall, I do not find that the appeal site is unsustainably located and in reaching this view I have considered paragraph 105 of the Framework in so far that *'significant'* development is not under consideration and, in any event, *'opportunities to maximise sustainable transport solutions will vary between urban and rural areas'* and should be taken into account in decision-making.

35. Use of the appeal site as one Gypsy and Traveller pitch (i.e., one touring and one static caravan) does not constitute significant development. In the context of what is a countryside location, the quantum of development under consideration, the location of the site at the very edge of a large settlement which includes public transport facilities, I find that the site is sustainably located. Therefore, I conclude that the appeal developments would not conflict with the sustainable transport and accessibility requirements of Policy SC7 of the CELPS or the Framework. While it is clear that the LPA does not agree with my conclusion on this matter, it is nevertheless noteworthy that an LPA representative commented at the hearing that this was not, in any event, a *'showstopper'* in terms of the determination of the appeals.

Whether intentional unauthorised development

36. The Department for Communities and Local Government policy statement 2015 (2015 Policy Statement) introduced planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals from 31 August 2015.
37. In this case, the evidence is that the appellant purchased the site on 12 October 2021. The sales particulars make it clear the site is in Green Belt and *'with no prospect of development'*. While some development is possible within the Green Belt, the sales particulars do not indicate that a Gypsy and Traveller site would be acceptable in this Green Belt location.
38. On 12 October 2021, the evidence is that the local planning authority (LPA) received reports that the land was being cleared and close boarded fencing erected. At the hearing, the LPA confirmed that at this time it had no evidence to indicate that the fencing being erected was in a location that required planning permission.
39. The evidence is that a planning application was also submitted to the LPA on 12 October 2021, for a Gypsy and Traveller site. There is no evidence that unauthorised development took place prior to the submission of the planning application.
40. It is not disputed that the LPA advised the appellant on 18 October 2021, via his agent, that enforcement action would be likely in the event of further work being undertaken on the land including its use as a Gypsy and Traveller site. The LPA undertook a site visit on 25 October 2021, and it is not disputed that four touring caravans had been brought onto the site which were being used for residential purposes and that the land had been levelled using a digger. The undisputed evidence indicates, therefore, that unauthorised development did take place prior to the planning application being determined by the LPA and indeed prior to it receiving any consultee responses.
41. I find that the appellant carried out works and use of the site in the clear knowledge that planning permission was required. The appellant was advised by the LPA on 18 October 2021 to not proceed any further with development

requiring planning permission but did so anyway. While I acknowledge that planning permission has been sought for the development, and a ground (a) appeal lodged in respect of the enforcement notice appeal, I find that intentional unauthorised development has taken place.

42. For the reasons outlined above, I conclude that modest adverse weight should be afforded to this matter as a material planning consideration in the overall planning balance. In reaching this conclusion, I am cognisant of the fact that the site is in the Green Belt: the 2015 Policy Statement states *'the Government is particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt'*.

Other consideration - the need for Gypsy and Traveller sites

43. The appellant claims that there is a potential unmet need of between 57 and 77 pitches in the area and that this should carry substantial weight in terms of allowing the appeal. It is further claimed by the appellant that there has been a long-standing failure of the LPA to meet identified need in development plan terms.
44. The SADPD was adopted in December 2022. Policy HOU 5 of the SADPD identifies a need in the Borough (2017 to 2030) for 32 additional permanent pitches for Gypsies and Travellers and a transit site of between 5 and 10 pitches for Gypsies and Travellers. Such need is to be delivered from six allocated Gypsy and Traveller sites and from sites in the *'open countryside, outside the Green Belt'* which accord with criterion 3(i) of policy PG 6 (Open countryside) and PG 10 (infill villages) of the adopted 2017 Cheshire East Local Plan Strategy 2010-2030 and have a genuine need for culturally appropriate accommodation in Cheshire East.
45. The SADPD has very recently been adopted. The appeal evidence includes a copy of the Examining Inspector's report. Such a report states, *'I am satisfied that the 2018 GTTSAA provides a sufficiently robust and up to date assessment of need in Cheshire East for the period 2017-2030'*. Given the recent adoption of the SADPD, I do not agree with the appellant that the LPA has failed to meet identified need in development plan terms.
46. The appellant claims that need and provision is not accurate and raises doubts about ORS data and surveys. However, this is a matter that was specifically addressed and considered by the Examining Inspector. Indeed, the Examining inspector's report states, in respect of the Traveller and Travelling Showpeople Accommodation Assessment 2018 (GTAA), *'because it was not possible to determine the travelling status of all of the households surveyed when conducting the GTTSAA, a need for 2 pitches is identified for households where it was unknown whether they met the Annex 1 definition. The report also quantifies the following additional needs: 3 pitches for those who do not meet the Annex 1 definition, but need culturally appropriate accommodation'*.
47. The evidence is that the Examining Inspector's report pre-dates the Court of Appeal judgment of *Smith v SSLUHC & Ors* (2022) EWCA (Smith judgment). The judgment confirms that the definition of Gypsies and Travellers in annex 1 of the PPTS is discriminatory in that it makes it harder for elderly and disabled ethnic Gypsies and Travellers to obtain planning permission. Indeed, it does not include persons of nomadic habitat of life who on grounds of their own or

family's dependants' educational or health needs or old age have ceased to travel permanently.

48. However, as detailed above the GTAA did consider need that went beyond need confined to the definition in Annex 1 of the PPTS. The Examining Inspector's report also states, *'with regard to accommodation needs of traveller families who do not meet the PPTS definition, but need culturally appropriate accommodation, section 3 of Policy HOU 5a sets criteria to guide decisions on planning applications on windfall sites in the open countryside'*.
49. I conclude that the evidence indicates that 'unknown need' as well as those Gypsies and Travellers that do not fall within the definition of Annex 1 of the PPTS have been planned for in respect of the SADPD. Indeed, such provision has been planned for in terms of Policy HOU 5 (3) of the SADPD. The evidence indicates that there is a strategy to meet required need over the remaining plan period.

Other consideration – five-year supply of Gypsy and Traveller sites.

50. The question of whether the LPA would be able to demonstrate a deliverable five-year supply of Gypsy and Traveller sites was recently considered by the Examining Inspector prior to the adoption of the SADPD.
51. In his report he states *'assuming the SADPD is adopted during 2022/23, a further 14 pitches on deliverable sites would be required to ensure a supply sufficient to meet 5 years' worth of the annualised target, which would be 15 pitches. The Council considers a further 14 pitches of the supply remain deliverable. 8 of these have planning permission, so should be considered deliverable. The other 6 pitches are on two allocated sites, which did not have planning permission at the time the evidence was submitted (Sites G&T 1 and G&T). However, they are both extensions to existing sites, which are being promoted by the site owners. As such, I consider there is sufficiently clear evidence that the pitches will be completed within the first 5 years following adoption'*.
52. Given the above, which is the most objective evidence that is before me, and the adoption of the SADPD in December 2022, I conclude that the LPA can demonstrate a five-year supply of Gypsy and Traveller sites. In reaching this view, it is also noteworthy that the LPA commented at the hearing that a further Gypsy and Traveller site had been approved (two pitches) in the Borough and which had not otherwise been counted in the five-year supply.
53. Nonetheless, at the hearing the appellant asserted that he did not consider that the LPA could demonstrate a five-year supply of deliverable Gypsy and Traveller sites. Despite my conclusion above, and to ensure robust decisions either way, I have therefore decided to determine the appeals on the basis that the LPA is unable to demonstrate a five-year supply of deliverable sites, i.e., a worst-case scenario.

Other consideration – availability of alternative sites

54. The appellant claims that even if a five-year supply of Gypsy and Traveller sites were to exist, there are currently no suitably available alternative Gypsy and Traveller sites to accommodate the family. This is not disputed by the Council which states that *'it is accepted that there is no immediately available alternative site provision in the Borough. In the medium term, there is an*

allocated site at Coppenhall Moss (site G&T 2) that has been allocated in the SADPD for 7 pitches. The site is in public ownership but does not have planning permission'.

55. At the hearing, I asked the Council when it thought that pitches at Coppenhall Moss (Site G&T 2), Crewe would be available. The Council's representative commented that no planning permission had been submitted for the site and that it was not likely to be available for Gypsies and Travellers for another two years.
56. Notwithstanding the above, policy HOU 5(3) of the SADPD, which permits in principle additional windfall pitches over and above those provided for on allocated sites, specifically excludes such sites in Green Belt. It does not, however, exclude such sites in '*countryside outside the Green Belt*'. At the hearing, I was referred to figure 1.1 of the CELPS. There are large parts of the Borough that include land designated as countryside outside of Green Belt. This includes such land around part of the settlement of Congleton and indeed elsewhere. At the hearing, I asked the appellant if there was any reason, in principle, why it would not be possible to find an alternative site in such an area and indeed to secure the necessary planning permission within the notice compliance period. The appellant indicated that it would be possible in principle.
57. The appellant nonetheless raised a concern about the length of time it had taken for planning applications to be determined by the LPA, including those for Gypsies and Travellers, and that a compliance period of 9 months would not be long enough to find a site, obtain planning permission and undertake necessary infrastructure works. However, the LPA indicated that previous delays were largely because of the Covid-19 pandemic and that backlogs were now under control. This was not disputed by the appellant.
58. In the above context, I find that the evidence is that the planning application decision making process would unlikely be a significant time barrier to occupying an alternative and policy compliant site outside of the Green Belt. Nonetheless, and, for other reasons including the best interests of the children which are discussed as part of the ground (g) appeal below, I find that it would be necessary to afford more time in terms of compliance with the requirements of the notice. A period of 14 months to cease using the site for residential purposes would afford the appellant reasonable time to find an alternative and policy compliant site, while also proportionately and reasonably considering the best interests of the children.

Other considerations - personal circumstances of the family & best interests of the children

59. Article 8 of the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
60. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.

61. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
62. There is no dispute between the parties that the appellant leads a nomadic lifestyle and travels for an economic purpose. I have no reason to reach a different conclusion on this matter.
63. The family previously lived at a Gypsy site in Warwickshire but had to leave due to anti-social behaviour from others and the appellant states that their possessions were stolen.
64. The evidence is that the appellant has family connections in the area. Hence, I acknowledge that there are clear advantages in social terms from the appellant and his family having a settled base in the area.
65. There are two children living on the site although the appellant commented at the hearing that their adult daughter did visit on occasion. One child is in the process of applying for a place at the local college. The second child attends a nearby secondary school and it is said that it took several months to place this child in such a school given the need for specific support. At the hearing, I was told that the second child has a tailored education and health plan which includes just less than twenty-nine hours per week specialist support.
66. I have no doubt that having a settled base for the purposes of continuing such education would provide the stability, assistance and social well-being needed for both children and, in particular, the child with health and special educational needs. However, in my judgment the evidence indicates that there is a possibility of a policy compliant pitch being found or becoming available elsewhere in the Borough and within the next fourteen months.
67. I acknowledge that potentially moving away from the appeal site, which has a close relationship with the secondary school, to perhaps another site the Borough, could result in some inconvenience for the family (including the children) in terms of getting to and from school and of course providing a stable educational environment for the next academic year. However, this need not be an inevitable outcome as I heard at the hearing that there were areas of countryside (outside of Green Belt) in Congleton and hence there may be potential to find and secure planning permission for an alternative site in the same area and ensure compliance with policy HOU 5(3) of the SADPD. To ensure reasonable continuity of education, at least for one academic year, and to give appropriate time to find a policy compliant alternative site, I find it necessary and justified to vary the compliance period in the notice. I deal with this matter further as part of the ground (g) appeal below.
68. I also heard that there were benefits associated with having a settled base for the family, including the children, in terms of GP surgery enrolment and hence health care. While this is a matter which weighs in favour of continued occupation of the site for residential purposes, there is nothing before me to suggest that such benefits could not be secured from the occupation of a

different and policy compliant site in the near future which does not result in the same level of harm in planning terms.

Other considerations - general

69. The appellant claims that he has cleared the site of fly-tipping. I have no reason to doubt that the site may have been prone to fly-tipping in the past, albeit that I have not been provided with specific evidence relating to frequency or amount. Furthermore, the threat of fly-tipping remains a possibility in many rural areas. Such a threat might be minimised in other ways such as, for example, improving the security of the site. Clearing the site of fly-tipping is therefore afforded only limited positive weight in the planning balance.
70. I acknowledge that some members of the local community have provided letters of support as part of the appeal process. In particular, there are comments about the family integrating well into the local community. I have no reason to doubt that this is the case, and this is therefore a matter to which I attribute some positive weight in favour of granting planning permission.

Planning Balance and Conclusion

71. I have found that the appeal developments would amount to inappropriate development in the Green Belt. Harm has been/would be caused to the openness of the Green Belt and there would be conflict with one of its purposes. In these respects, there would be direct conflict with policies SC7 and PG3 of the CELPS and policies HOU 5 and HOU 7 of the SADPD. These are matters to which I afford very substantial adverse weight in decision making terms. Furthermore, I have concluded that modest adverse weight should be attributed to the fact that intentional unauthorised development has taken place and that some harm has been/would be caused to the character and appearance of the countryside in conflict with policies SE1, SE4 and SC7 of the CELPS, even accounting for additional landscaping.
72. While highway safety could be suitably addressed by means of the imposition of a condition for both appeals, and the site is not deemed to be unsustainably located in the context of one pitch and the proximity to Congleton, these are matters of neutral consequence in the planning balance.
73. While there are currently no alternative Gypsy and Traveller pitches available in the area for the family, the evidence is that there is a likelihood of a policy compliant windfall site being found (including obtaining planning permission and providing the necessary on-site infrastructure) within fourteen months, i.e., the varied compliance period in the notice (see ground (g) appeal below).
74. Set against the above, are the personal circumstances of the family, including the best interests of the children which are matters that weigh in favour of allowing the appeals. In my judgment, the LPA can demonstrate a five-year supply of deliverable Gypsy and Traveller sites. However, for the purposes of determining these appeals, I have proceeded on a worst-case scenario, i.e., that the LPA cannot demonstrate a five-year supply of deliverable Gypsy and Traveller sites. These matters weigh in favour of allowing the appeals, although it is noteworthy that paragraph 16 of the PPTS states that subject to the best interests of the child, personal circumstances and unmet need '*is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances*'.

75. On balance, I find that the harm to the Green Belt by reason of inappropriateness, and the other identified harm, is not clearly outweighed by the other considerations so as to amount to the very special circumstances necessary to justify the developments which are the subject of appeals A and B. It is for this reason, that I shall not grant permanent planning permission for the appeal developments.
76. At the hearing, the appellant indicated that he wanted me to consider a temporary planning permission of three years if permanent planning permission was not justified. I do not find that a temporary planning permission is justified as the harm that would be caused to the Green Belt, and the character and appearance of the area, would still be unacceptable in the overall planning balance. Furthermore, I do not find that a temporary planning permission is justified as there is a likelihood of an alternative site being secured within a short period of time. In this case, I intend to extend the compliance period in the notice as explained as part of my ground (g) appeal reasoning below and, in that respect, it would afford the family time to find such an alternative site without the need to impose a temporary planning permission.
77. In respect of appeal A, I conclude that the ground (a) appeal does not succeed and planning permission is refused. For appeal B, the appeal does not succeed. I accept that in upholding the varied notice, it would result in the loss of a home for the appellant and his family. In this regard, there would be an infringement of rights under Article 8 of the European Convention on Human Rights as incorporated into the HRA. However, the collective planning harm that I have identified is of such weight that upholding the varied enforcement notice and refusing planning permission is a proportionate, legitimate and necessary response that would not violate those persons rights under Article 8. I find that the protection of the public interest cannot therefore be achieved by means that are less interfering of their rights.

Appeal A – ground (g) appeal

78. An appeal on ground (g) makes the claim that the period specified in the notice in accordance with s173(9) of the Act falls short of what should reasonably be allowed.
79. The compliance period in the notice is 9 months to cease use of the site for residential purposes and 10 months to remove associated development from the land and to restore the land by covering it with topsoil and seeding it with grass seed.
80. The appellant states that a period of 18 months should be given to vacate the site to avoid, as far as possible, disruption to the education of the appellant's child who has special educational needs. I have already considered the potential for alternative and policy compliant Gypsy and Traveller sites to become available within the compliance period as part of the consideration of the ground (a) appeal. In this regard, it is reasonable that I extend the compliance period.
81. I also afford weight to the education, health and well-being needs of the children and the support that is currently provided for one child who attends the local secondary school. Therefore, to ensure continuity of education for at least one academic year, and to enable the appellant to find an alternative and policy compliant site elsewhere, I find that the compliance period to cease use

of the site for residential purposes should be varied from 9 months to 14 months. While the LPA conceded at the hearing that the compliance period should in fact be varied to 12 months from 9 months, given the need to find an alternative site and taking into account the personal circumstances of the family including the children, I find that a period of 14 months is, on balance, justified.

82. I find that the varied compliance period is a fair and justified balance between the need to remedy the breach of planning control in the legitimate public interest and the interference with the Article 8 rights of the family.
83. For the above reasons, I conclude that the ground (g) appeal succeeds. I shall vary paragraph 6 a) to f) of the notice by deleting all the words and replacing them with 14 months for a) and 15 months for b), c), d), e) and f). I am therefore satisfied that varying the notice would not cause injustice to either of the main parties.

Overall Conclusions

Appeal A: APP/R0660/C/22/3309004

84. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Appeal B: APP/R0660/W/22/3308801

85. For the reasons given above, I conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Patrick Doherty

Josephine Doherty

Phillip Brown, Phillip Brown Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Evans, Planning Team Leader (Development Management)

Zafer Faqir – Senior Planning Officer (Enforcement)

Jeremy Owens, Development Planning Manager (Strategic Planning)

OTHER INTERESTED PARTIES:

Daniel Winterton, resident

Philip Winterton, resident

DOCUMENTS SUBMITTED AT THE HEARING

Statement from Daniel Winterton